



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/173883

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services (the agency) in regard to FoodShare benefits (FS), a hearing was held on May 24, 2016, at Neenah, Wisconsin.

The issues for determination are whether 1) the Petitioner's appeal is timely with regard to her dispute over the amount of FoodShare benefits she received during her last certification period; 2) whether the agency correctly ended her FoodShare benefits, effective February 1, 2016; 3) whether the agency correctly denied her request to backdate her FoodShare benefits to February 1, 2016; and 4) whether the agency correctly determined the current amount of her FoodShare Benefits.

NOTE: The record was held open until June 3, 2016, to allow the parties to supplement the record with documentation of Petitioner's current medical expenses.

On May 24, 2016, the agency submitted FoodShare Budget Printouts for April, May, June and July 2016. (Exhibit 10), a packet of medical bills the Petitioner gave to the agency (Exhibit 11), and a bank/credit union statement that the Petitioner gave to the agency (Exhibit 12)

On May 31, 2016, Hearings and Appeals received a packet of documents from Petitioner with a letter dated May 27, 2016. (Exhibit 13)

On June 2, 2016, Hearings and Appeals received a packet of documents from Petitioner in a 5.5" x 8.5" envelope. Inexplicably, the packet included the Petitioner's EBT card. The EBT card is being returned to the Petitioner. The remaining documents have been marked collectively as Exhibit 14.

Also on June 2, 2016, Hearings and Appeals received a 9" x 13" re-used [REDACTED] envelope from Petitioner that contained three additional 9" x 13" envelopes with various documents within them. This submission has been marked collectively as Exhibit 15.

On June 3, 2016, Hearings and Appeals received some credit union statements from the Petitioner. This has been marked as Exhibit 16.

On June 13, 2016, the Division of Hearings and Appeals received a receipt for Advair. This was post-marked May 31, 2016. As such, it will be marked as Exhibit 17, although it should be noted, another copy of that receipt was included in Exhibit 13.

There appeared at the designated time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. On December 14, 2015, the agency sent the Petitioner a notice to remind her to complete her FoodShare renewal by January 31, 2016. This was sent to the Petitioner at her home address. (Exhibit 4)
3. On December 28, 2015, the agency sent the Petitioner a letter, letting her know that they had made an appointment for her to do her renewal/interview by phone on January 6, 2016 at 12:45 p.m. This notice was sent to the Petitioner's home. (Exhibit 5)
4. On January 6, 2016, the agency attempted to contact the Petitioner by phone and received an outgoing message indicating that she would be in hospital or nursing home, beginning in mid-December. No message was able to be left. (Exhibit 9)
5. On January 8, 2016, a social worker from the nursing home and called the agency to let them know the Petitioner would be discharged on January 11, 2016. (Exhibit 9)
6. On January 11, 2016, the Petitioner called the agency to advise that she was discharged from the nursing home. (Exhibit 9)
7. On January 18, 2016, the agency received, as returned mail, a notice of case transfer that was sent to the Petitioner at the nursing home. (Exhibit 9; testimony of [REDACTED])
8. On January 19, 2016, the agency sent the Petitioner a notice indicating that her FoodShare benefits would be ending effective February 1, 2016, because she did not complete her renewal. This notice was sent to the Petitioner at the nursing home. (Exhibit 6)
9. On February 1, 2016, the agency sent the Petitioner another notice, advising her that her FoodShare benefits ended on that same date, because she did not complete her renewal. This notice was sent to the Petitioner at the nursing home. (Exhibit 7)
10. On April 12, 2016, the Petitioner reapplied for FoodShare benefits. (Exhibit 9)

11. On April 13, 2016, the agency sent the Petitioner a notice indicating that he application for benefits was approved and that she would receive a pro-rated amount of \$43.00 for April 2016 and that she would receive \$68.00 per month for May 2016 going forward. (Exhibit 8)
12. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 22, 2016. (Exhibit 1)
13. The Petitioner receives \$583.78 per month in SSI and \$253.00 per month from Social Security for total gross income of \$836.78. (Testimony of Petitioner; Exhibit 10)
14. Petitioner pays rent in the amount of \$143.00 and has a heating expense. (Testimony of Petitioner; Exhibit 10)

DISCUSSION

At the hearing the Petitioner had several issues she wanted to appeal. As best can be determined the Petitioner wanted to appeal 1) The amount of FoodShare benefits she received during her last certification period; 2) The discontinuance of her FoodShare benefits, effective February 1, 2016; and 3) The denial of her request to backdate her FoodShare benefits to February 1, 2016 and 4) The current calculation of her FoodShare Benefits.

FoodShare Benefits From the Last Certification Period

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. The Federal Regulations state the following with regard to appeal deadlines:

1. A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days.

A State / agency action includes a refusal to restore benefits lost more than 90-days, but less than 1 year prior to the recipient's request to restore the benefits.

2. "In addition, at any time within a certification period, a household may request a fair hearing to dispute its current level of benefits."

Emphasis Added 7 CFR 273.15(g)

Petitioner's appeal of her past FoodShare allotments is untimely, because her last certification period ended on January 31, 2016. (See Exhibits 4 and 5) Further, any allotment determination predating the April 2016 determination, had to have taken place more than 90-days before the Petitioner filed her appeal, since there is no indication in the case comments that any happened in December 2015 that would have changed the Petitioner's benefit amount. As such, the Petitioner's appeal of the prior allotment determination is untimely for that reason too. Consequently, there is no jurisdiction to review the agency's FoodShare allotment determinations prior to April 2016.

Discontinuance of Petitioner's Benefits Effective February 1, 2016

Petitioner's appeal of the discontinuance of her benefits, effective February 1, 2016, is timely, as the 90th day to file an appeal fell on Monday, May 2, 2016, and Petitioner filed her appeal on April 22, 2016.

Had the agency sent the notice of discontinuance to the correct address, the termination of benefits effective February 1, 2016 would have been upheld, since no renewal was completed. However, the agency didn't send the notice to the correct address.

By January 11, 2016, the agency knew the Petitioner had returned home from the nursing home. The agency was reminded of the fact that the Petitioner was not at the nursing home on January 18, 2016, because it received back a notice regarding a case transfer that it sent to the nursing home. However, the agency sent the January 19, 2016 and February 1, 2016, notices regarding her FoodShare benefits ending to the nursing home.

Because the agency sent the notices to the wrong address, it did not give the Petitioner proper notice of her FoodShare case closing. As such, it did not correctly end her benefits. The agency will have to restore Petitioner's benefits for the months of February, March and April 2016, at \$68.00 per month, the level determined during the prior certification period.

Request to Back Date Benefits

Given the foregoing determination, the Petitioner's appeal concerning a denial of her request to backdate benefits to February 1, 2016, is moot and will not be addressed.

Petitioner's Current FoodShare Allotment

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has a member over age 60. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

Once a household passes the gross income test the following deductions are applied in determining the FoodShare allotment. (*FSH, at § 4.6*):

- (1) a standard deduction – *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).*

The standard utility allowance (HSUA) for individuals with a heating expense is \$458 per month.

There is a cap of \$490.00 on the shelter cost deduction, *unless* a household has an elderly, blind or disabled member.

FSH, §§ 4.6.7.1 and 8.1.3.

The term 'disabled' is a term with a definition as to the FoodShare program:

3.8.1.1 EBD Introduction

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: [SSA](#), [MA](#), [SSI](#) or SSI related MA, Railroad Retirement Board ([RRB](#)).

FSH, §3.8.1.1.

For Petitioner, she receives a \$155 per month standard deduction for a household of 1-3 people.

The Petitioner is not entitled to an earned income deduction, because she does not have any earned income.

The Petitioner is not entitled to a deduction for dependent care expenses, because she has no dependents that she reported.

It is undisputed that the Petitioner pays utilities that include a heating expense and is, therefore, entitled to the full HSUA of \$458 per month.

Petitioner's contention is that the agency has not correctly calculated her excess medical expense deduction. For the months of May, June and July, the agency determined that the Petitioner had no excess medical expenses.

FSH §4.6.4.1 states that for a medical expense to be allowed it must be either be 1) still due and owing, 2) a currently recurring expense, or 3) it must have been paid during the current certification period, and 4) it cannot be an expense that was previously used as a deduction.

One-time medical expenses can be budgeted for one month or averaged over the remaining certification period. *FSH §4.6.4.1*

Because the Petitioner's case closed effective February 1, 2016, due to the lack of a renewal, and because, the Petitioner did not reapply until mid-April 2016, the current certification period begins in April 2016.

I reviewed the numerous documents submitted in Exhibits 11 -17. Most of the expenses appeared to have been paid prior to the current certification period and are therefore, not allowable. With some expenses, it was not clear whether they were still outstanding expenses, and so, those expenses could not be counted. The Petitioner wrote notes on her credit union/bank statement to indicate medical expenses that might have fallen in the current certification period, but no corresponding bill was provided. So, those expenses could not be counted. After filtering through Exhibits 11-17, this is what could best be ascertained regarding the Petitioner's medical expenses:

1. Petitioner has a recurring expense on a medical loan of \$131 per month.
2. Petitioner had made a payment to [REDACTED] for \$13.00 on 4/18/16; averaged over a 12 month certification period, this is \$1.08 per month.
3. A statement from [REDACTED] indicates the Petitioner paid \$35.98 for prescriptions during the 16 month period of January 1, 2015 to May 4, 2016. This works out to be a recurring monthly expense of \$2.25 (\$25.98/16 months).

Totaling Petitioner's medical expenses we have:

$$\$131.00 + \$1.08 + \$2.25 = \$134.33 \text{ total allowable medical expenses}$$

The excess medical expense then works out to be: $\$134.33 - \$35.00 = \$99.33$.

Applying the applicable deductions to Petitioner's income we have the following allotment calculation:

Gross Income	\$836.78	Rent	\$143.00
No Earned Income Deduction		HSUA	\$458.00
Standard Deduction	-\$155.00	50% Net income	-\$291.23
Medical Expenses exceeding \$35	-\$99.33		
No Dependent Care Expenses		Excess Shelter Expense	\$309.77
<hr/>			
Net Income Before Shelter Expense (BSE)	\$582.45		
Excess Shelter Expense	- \$309.77		
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Net Income	\$272.68		

Individuals, with a net income of \$272.68 qualify for a FoodShare allotment of \$112.00 per month. *FSH §8.1.2.*

CONCLUSIONS OF LAW

- 1) The Petitioner's appeal is untimely with regard to her dispute over the amount of FoodShare benefits she received during her last certification period. Therefore, there is no jurisdiction to review that issue.
- 2) The agency did not correctly end the Petitioner's FoodShare benefits, effective February 1, 2016, because it did not give her proper notice of her case closure.
- 3) The issue with regard to whether the agency correctly denied Petitioner's request to backdate her FoodShare benefits to February 1, 2016, is moot because the agency did not give her proper notice of her case closure.
- 4) The agency did not correctly calculate the Petitioner's current FoodShare benefit.

THEREFORE, it is

ORDERED

- 1) The agency shall reinstate the Petitioner's FoodShare benefits for the months of February, March and April 2016, at the prior level of \$68.00 per month.
- 2) The agency shall issue to Petitioner FoodShare benefits, in the amount of \$112.00 per month, effective May 1, 2016.

The agency shall take all administrative steps to complete this task within ten days of this decision.

In all other respects the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

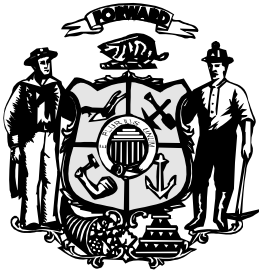
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of June, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 16, 2016.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability